Zainon bte Suppian Suppiah & Anor v Universiti Malaya

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2(S3)–22–599 OF 1997
AZMEL J
29 JANUARY 2007

Labour Law — Employment — Disciplinary proceeding — Plaintiff mentally ill at the time of disciplinary proceeding — Medical report not made known to disciplinary committee — Whether plaintiff unlawfully dismissed

Labour Law — Employment — Termination of service — Dismissal — Plaintiff diagnosed suffering from mental illness — Plaintiff found to be absent from work — Whether dismissal of plaintiff by defendant fair and reasonable

Limitation — Period of limitation — When time bar begins to run — Plaintiff was diagnosed suffering from mental illness when he was dismissed — Limitation Act 1953 s 24(1)

The original plaintiff, Suppian Suppiah, was employed by the defendant as a bus driver since 1963. On 29 April 1982 he was diagnosed suffering a mental illness called paranoid schizophrenia. He had not fully recovered from that illness. The defendant by a letter dated 26 April 1983 asked him to report for duty as a bus driver. However he was given light duty work under the supervision of one Balaraman ('DW8'). As the plaintiff was found to be absent from work disciplinary action was taken against him. The plaintiff was absent from the disciplinary hearing. The disciplinary committee decided that the plaintiff be dismissed from his services. No appeal to the appeal board was filed by the plaintiff. After the plaintiff recovered from his illness in 1997 the plaintiff filed this action against the defendant seeking for a declaration that he had been unlawfully dismissed from his services. Unfortunately the plaintiff passed away on 18 October 1998. The plaintiff's daughter Zainon bte Suppian Suppiah and his widow, Che Pah bte Mat Sari took over this suit as personal representatives of the deceased. The only issue to be determined was whether the dismissal of the plaintiff by the defendant on the recommendation of the disciplinary committee was fair and reasonable.

Held:

(1) The court found that at the date the plaintiff was dismissed he had not fully recovered from his mental illness. Not having been fully recovered from his mental illness the plaintiff was not able to think rationally and therefore would not be able to think what was right and what was wrong. As such he was not able to carry out his normal duties as an employee (see para 5(1) & (2)).

(2) At the place where he was given light duty under the supervision of DW8, as confirmed by DW8, he was in fact given no work at all. Therefore his presence there would serve no specific purpose. In other words whether he was present there or not would not make any difference at all. If the intention was merely to instil discipline to the plaintiff, a mentally sick person forcing him to sit at the place from 8am to 4.30pm doing nothing, it would, in the court's view, be ridiculously unfair having regard to the serious mental illness that the plaintiff was suffering. It would be even more ridiculously unfair and unjust to use his absence from work as the ground to dismiss the plaintiff from service. In such a mental state the plaintiff would not be able to know that he was committing a wrong (see para 5(3)).

(3) It was a very serious mistake that the disciplinary committee had omitted to consider a very material fact in that at the time of the disciplinary proceedings the plaintiff was suffering from a serious mental illness of paranoid schizophrenia and he had not fully recovered from it at the time of the alleged absence from work and also at the time of the disciplinary hearing. The defendant had in its possession the plaintiff's medical report. Yet that medical report was not tendered before the disciplinary committee. A reasonable disciplinary committee would become sympathetic and would be very slow to dismiss the plaintiff outrightly in the light of his mental illness (see para 5(4)).

[Bahasa Malaysia summary

Plaintif yang asal, Suppian Suppiah, diambil kerja oleh defendan sebagai pemandu bas semenjak 1963. Pada 29 April 1982 beliau didiagnoskan dengan penyakit mental yang dikenali sebagai 'paranoid schizophrenia'. Beliau tidak pulih sepenuhnya daripada penyakit tersebut. Defendan telah melalui satu surat bertarikh 26 April 1983 memintanya untuk melaporkan diri sebagai pemandu bas. Akan tetapi, beliau diberi kerja-kerja ringan di bawah arahan Balaraman ('DW8'). Oleh kerana plaintif didapati tidak hadir untuk bekerja tindakan tatatertib diambil terhadapnya. Plaintif tidak hadir dipendengaran tatatertib tersebut. Jawatankuasa tatatertib memutuskan bahawa plaintif dipecat daripada perkhidmatannya. Tiada rayuan ke lembaga rayuan difailkan oleh plaintif. Selepas plaintif pulih daripada penyakitnya di

1997, plaintif memfailkan tindakan ini terhadap defendan menuntut satu deklarasi bahawa beliau telah dipecat dengan tidak sah daripada perkhidmatannya. Malangnya plaintif meninggal dunia pada 18 Oktober 1998. Anak plaintif Zainon bte Suppian Suppiah dan balunya, Che Pah bte Mat Sari mengambil alih tindakan tersebut sebagai wakil-wakil peribadi kepada simati. Hanya satu isu yang perlu diputuskan ialah sama ada pemecatan plaintif oleh defendan di atas pendapat jawatankuasa tatatertib adalah adil dan munasabah.

Diputuskan:

(1) Mahkamah mendapati bahawa pada tarikh plaintif dipecat beliau belum pulih sepenuhnya daripada penyakit mentalnya. Oleh kerana beliau belum pulih sepenuhnya daripada penyakit mentalnya plaintif tidak dapat berfikiran waras dan dengan itu tidak dapat memikirkan apa yang betul dan apa yang salah. Dengan itu, beliau tidak dapat menjalankan tugas-tugas yang biasa sebagai pekerja (lihat perenggan 5(1) & (2)).

(2) Di tempat di mana beliau diberikan kerja-kerja ringan di bawah kawalan DW8, seperti yang disahkan oleh DW8, beliau sebenarnya tidak bekerja langsung. Dengan itu kehadiran beliau di sana tidak mendatangkan sebarang tujuan. Dalam perkataan lain tiada perbezaan langsung sama ada beliau hadir ataupun tidak. Sekiranya hasrat ialah hanya untuk menyebabkan tatatertib terhadap plaintif, seseorang yang sakit mental dipaksa duduk di satu tempat dari 8 pagi sehingga 4.30 petang tanpa membuat apa-apa, ia adalah, pada pandangan mahkamah, adalah terlalu tidak adil memandangkan plaintif mengalami penyakit mental yang serius. Ia lebih tidak adil dan saksama untuk menggunakan ketidak hadirannya untuk bekerja sebagai alasan untuk memecat plaintif daripada perkhidmatannya. Dalam keadaan mental sedemikian plaintif tidak akan dapat tahu sama ada beliau telah melakukan satu kesalahan atau tidak (lihat perenggan 5(3)).

(3) Ia adalah satu kesilapan yang serius bahawa jawatankuasa tatatertib telah tidak mempertimbangkan satu fakta yang amat material bahawa pada masa prosiding tatatertib plaintif sedang mengalami 'paranoid schizophrenia' penyakit mental yang serius dan belum pulih sepenuhnya pada masa ia dikatakan tidak hadir bekerja dan juga pada masa pendengaran tatatertib tersebut. Defendan mempunyai dalam milikannya laporan perubatan plaintif. Namun demikian laporan perubatan tersebut tidak diberikan kepada jawatankuasa tatatertib. Sesuatu jawatankuasa tatatertib yang munasabah akan bersimpati dan tidak akan memecat plaintif sewenang-wenangnya memandangkan penyakit mentalnya (lihat perenggan 5(4)).]

Notes

For a case on disciplinary proceeding, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 919.

For cases on termination of service, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1240–1282.

For a case on when time bar begins to run, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2269.

Legislation referred to

Limitation Act 1953 s 24(1)
Pension Act 1951

ML Chang (Legal Aid Centre) (Kuala Lumpur Bar Committee) for the plaintiff.
KK Wong (Karen Lee Foong Voon with him) (Lee Hishammuddin) for the defendant.

Azmel J (now FCJ):

[1] The original plaintiff, Suppian Suppiah, was employed by the defendant as a bus driver since 1963. On 29 April 1982 he was diagnosed suffering a mental illness called paranoid schizophrenia. He had not fully recovered from that illness. The defendant by a letter dated 26 April 1983 asked him to report for duty as a bus driver. However he was given light duty work supervised by one Balaraman ('DW8'). It was confirmed by DW8 that he did not assign any duty on the plaintiff. DW8 confirmed that the plaintiff appeared weak and was not in a position to drive a vehicle. As the plaintiff was found to be absent from work disciplinary action was taken against him even though the defendant knew that the plaintiff was still not recovered from the mental illness.

[2] At the disciplinary hearing the plaintiff was absent. So the Disciplinary Committee decided that the plaintiff be dismissed from his services. No appeal to the Appeal Board was filed by the plaintiff.

[3] After the plaintiff recovered from his illness in 1997 the plaintiff filed this action against the defendant seeking for a declaration that he had been unlawfully dismissed from his services. Unfortunately the plaintiff passed away on 18 October 1998. In view of that the plaintiff's daughter Zainon bte Suppian Suppiah and his widow, Che Pah bte Mat Sari took over this suit as personal representatives of the deceased.

[4] Before dealing with the main issue regarding this case it should be noted the provisions of the Limitation Act 1953 do not apply in the plaintiff's case

due to him being incapacitated by reason of him suffering from paranoid schizophrenia. This is clearly provided under s 24(1) of the said Act.

[5] The only issue to be determined was whether the dismissal of the plaintiff by the defendant on the recommendation of the Disciplinary Committee was fair and reasonable. I arrived at the conclusion that the dismissal was unfair and unjustified on the following reasons:

(1) It is my finding that at the date the plaintiff was dismissed he had not fully recovered from his mental illness. This can be confirmed from the report of Dr Susan Ong dated 26 April 1983, the evidence of DW8 and also the evidence of his widow, Che Pah ('PW2');

(2) Not having been fully recovered from his mental illness the plaintiff was not able to think rationally and therefore would not be able to think what is right and what is wrong. As such he was not able to carry out his normal duties as an employee;

(3) At the place where he was given light duty under the supervision of DW8, as confirmed by DW8, he was in fact given no work at all. Therefore his presence there would serve no specific purpose. In other words whether he was present there or not it would not make any difference at all. If the intention was merely to instil discipline to the plaintiff, a mentally sick person forcing him to sit at the place from 8am to 4.30 pm doing nothing, it would, in my view, be ridiculously unfair having regard to the serious mental illness that the plaintiff was suffering. It would be even more ridiculously unfair and unjust to use his absence from work as the ground to dismiss the plaintiff from service. In such a mental state the plaintiff would not be able to know that he was committing a wrong;

(4) What I consider to be very serious mistake is the fact that the Disciplinary Committee had omitted to consider a very material fact in that at the time of the disciplinary proceedings the plaintiff was suffering from a serious mental illness of paranoid schizophrenia and he had not fully recovered from it at the time of the alleged absence from work and also at the time of the disciplinary hearing. The defendant had in its possession the plaintiff's medical report prepared by Dr Susan Ong. Yet that medical report was not tendered before the Disciplinary Committee. This is confirmed by the evidence of a panel member of the Disciplinary Committee ('DW3'). Professor Dr Ahmad Nawawi bin Hj Ayob ('DW3') under cross-examination stated:

> I cannot remember whether we were told as regards the illness of the patient who was disciplined … I cannot remember whether any medical report of this patient was tendered during the disciplinary hearing. I cannot remember whether condition of the patient's medical condition had been taken when

A the decision to dismiss him was made. I cannot remember whether at the disciplinary hearing the Board was informed that the patient was suffering from paranoid schizophrenia.

B **[6]** From such statement the court can safely assume that the plaintiff's medical report was not tendered during the disciplinary proceedings. The other two members of the Disciplinary Committee did not give evidence. So the evidence of DW3 which was not challenged must be the true situation of what took place at the disciplinary proceedings.

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[7] In my view the failure on the part of the defendant to tender the medical report of the plaintiff to indicate his mental status to the Disciplinary Committee was a very serious omission. It was not a fact which the defendant was not aware of. The defendant had full knowledge but chose not to inform
D the Disciplinary Committee at the disciplinary proceedings. Had the Disciplinary Committee been appraised that the plaintiff was suffering from the serious mental illness there would be strong probability that they would not make a decision in the manner they had done against the plaintiff. A reasonable Disciplinary Committee would become sympathetic and would be
E very slow to dismiss the plaintiff outrightly in the light of his mental illness. It is not his wish to be mentally ill. To dismiss the plaintiff for being absent from work when he was still suffering from paranoid schizophrenia would in my view be exceptionally harsh and unfair and highly unjustified having regard to the fact that the defendant, being an institution of higher learning,
F is expected to be considerate, fair and compassionate.

[8] In the light of the facts and circumstances of this case I allowed the prayers sought by the plaintiff. I also declared that the dismissal of the plaintiff was unlawful and unjust. I awarded the plaintiff damages by
G payment of his full salaries until the date of his death with interest at the rate of 8% pa from the date of the filing of this writ to the date of realisation.

[9] I further declared that the plaintiff is also entitled to full pension benefits in accordance with the provisions of the Pension Act 1951. I also
H ordered costs to be paid to the plaintiff by the defendant.

Order accordingly.

I Reported by Sally Kee